

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 06-1183 (DSD/AJB)

Henry Lo Carter,

Petitioner,

v.

ORDER

Federal Bureau of Prisons
Warden R.L. Morrison,

Respondents.

This matter is before the court upon petitioner's objections to the report and recommendation of Magistrate Judge Arthur J. Boylan dated May 18, 2006. In his report, the magistrate judge concluded that the petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 should be denied in part and denied as moot in part.

The court reviews the report and recommendation of the magistrate judge de novo. 28 U.S.C. § 636(b)(1)(C). The court finds that the report and recommendation of the magistrate judge is well reasoned and correctly disposes of petitioner's claims in light of the recent decision of Fults v. Sanders, 442 F.3d 1088 (8th Cir. 2006). In Fults v. Sanders, the Eighth Circuit Court of Appeals invalidated 28 C.F.R. §§ 570.20 and 570.21 on the basis that those regulations conflict with 18 U.S.C. § 3621(b), which gives broad discretion to the Bureau of Prisons to determine the location of an inmate's imprisonment. See 442 F.3d at 1092.

Although the Fults decision requires the Bureau of Prisons to conduct an individualized determination of petitioner's eligibility for placement in a community corrections center ("CCC"), neither Fults v. Sanders nor any other authority requires the Bureau of Prisons to conduct an eligibility review or immediately transfer a prisoner on demand by the prisoner. Petitioner's current projected release date is June 18, 2010. In response to this petition and the Fults v. Sanders decision, the Bureau of Prisons informed the petitioner that he will receive an individualized review of his eligibility for CCC placement approximately one year prior to his release date. The Bureau of Prisons has preliminarily determined that the petitioner can expect to receive 150 to 180 days of halfway house placement.

Therefore, for the foregoing reasons, the court adopts the report and recommendation of the magistrate judge in its entirety.

Accordingly, **IT IS HEREBY ORDERED** that:

1. Petitioner's application for habeas corpus relief under 28 U.S.C. § 2241 [Doc. No. 1] is denied in part and denied as moot in part. The petition is denied as moot to the extent petitioner requests that the Bureau of Prisons determine his halfway house eligibility without regard to 28 C.F.R. §§ 570.20 and 570.21. The petition is denied to the extent petitioner requests immediate transfer to a halfway house or immediate determination of his halfway house eligibility date.

2. The Bureau of Prisons shall conduct an individualized review of petitioner's CCC eligibility eleven to thirteen months before the inmate's projected release date, pursuant to policy set forth in Program Statement 7310.04, page 7, Community Corrections Center Utilization and Transfer Procedures which is already in effect.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: June 27, 2006

s/David S. Doty
David S. Doty, Judge
United States District Court